This paper looks at two recent industrial actions by Canadian unions in the artistic and cultural sector

- ACTRA – CFTPA (Independent Production Agreement) strike 2007
- Dispute between Canadian Actors Equity (and several Toronto arts unions i.e. AFM, IATSE) and Blue Man Group 2006

The disputes were meant to enhance their representation and improve the economic position of a group of workers. Both actions were attempted to apply sanctions to those in a position of power to affect their livelihood.

- Both unions and both industrial actions operate outside of the “Wagner Model.”

In the Wagner Model, collective bargaining law typically entitles a union to apply to a labour relations board for certification to be the sole and exclusive bargaining representative for a specified group of workers employed by an employer.

- This certification guarantees the workers the right to bargain collectively with their employer and outlaws certain unfair labour practices by the employer, including “failure to bargain in good faith.”
- It also entitles the workers, at certain specified times, to pressure the employer by withdrawing their labour, i.e. to “strike.” Timely strikes mean that the workers cannot be disciplined for withdrawing their labour and have the right to return to their jobs at the conclusion of the strike.
- It also guarantees the workers the right to have disputes over the “application, interpretation and alleged violation” of the collective agreement submitted binding, third-party arbitration
- Labour relations boards can find an employer in violation of the above provisions. Failure of the employer to abide by a board or arbitration decision can be submitted to and enforced by the courts, as a matter of contempt of court

But both of the unions in these cases represent self-employed workers.

- Typically, self-employed workers are “engaged” for short-term contracts of service.
- In the arts, especially in audio recording, film, video and television and other recorded media, and in live performance, performers are not employees.
- The superordinate entity is called several things, such as “engager,” “producer.” But I have elsewhere called them together with employers as “deployers” and will continue to call them that here.

Self-employed performers are thus not entitled to the benefits conferred by collective bargaining legislation.

- That means that the usual legal protections for bargaining and striking are not available to them.

The law does not prohibit a group of self-employed workers from bargaining collectively with a deployer

- As in the days before modern collective bargaining law was enacted, groups of workers and a deployer are free to recognize one another, to bargain collectively, to make collective agreements, and to specify a procedure for sanctions to be imposed by either side

However, the following difficulties arise:

- Unlike collective bargaining law, neither side can compel the other side to recognize it, to bargain with it in good faith,
- There is no recourse to sanctions for these failures
- Neither side can force the other to submit disputes to binding arbitration (unless such provision is first negotiated into the agreement.)
- If the parties do sign a collective agreement and one side violates it, there is no recourse to the protections of labour law. It must be handled like a commercial contract dispute, where one party sues the other.

- Thus, the power resources required for the union of self-employed workers to enter into a stable collective bargaining regime is higher than for employed workers
Weaker groups are especially vulnerable

- It must be noted here that in a select few Canadian jurisdictions, legislators have made provision for the rights of self-employed workers to bargain collectively
  - In some jurisdictions, collective bargaining law and/or labour boards have allowed for the certification of dependent contractors i.e. workers who are not in a full employment situation but whose livelihood depends crucially upon a single deployer e.g. taxi drivers and the companies that organize them and dispatch calls
  - In the federal and the Quebec jurisdictions, there is so-called “Status of the Artist” legislation which, among other things, emulates collective bargaining legislation for groups of self-employed “artists”
    - The artists can get together and name a group of “producers” (individuals and organizations who purchase their product or service)
    - There is a board that handles applications and complaints and can certify; the artists and producers are obliged to negotiate a collective agreement in good faith; legal sanctions can ensure for failure to do so; disputes can be handled by the board; and either party can apply sanctions when negotiations break down by refusing to purchase or supply.
  - However, for the most part, self-employed workers, especially those who work for several deployers, are not subject to collective bargaining law

This paper explores how unions of self-employed artists have coped with these restrictions

- Intellectual Capital in Networked Arts
  - intellectual capital aggregate of
    - human (people’s potential,)
    - structural (knowledge assets: existing skills, intellectual property,)
    - relational capital (relations w. market e.g. clients & customers)
  - in corporate model, intellectual capital owned (developed, deployed and exploited) by firm; risk & reward borne by firm
  - in network relations, intellectual capital development, deployment and exploitation shared by producers & artists
    - e.g. artists own their own “brand” & proceeds thereof

- The ACTRA strike of 2007
  - Why focus on ACTRA?
    - It’s a union/guild that represents self-employed workers
    - It is arguably the strongest and most cohesive of the artists’ unions/guilds in Canada
    - Its collective agreement is a national voluntary recognition agreement with little connection to the usual or traditional collective bargaining law (but has some key intersections with this “old law”)
      - It recently engaged in a strike over a small but key issue in intellectual property rights – proceeds from its members’ work used on “new digital media”
  - ACTRA is the Alliance of Canadian Cinema, Television and Radio Artists and consists of 21,000 members across Canada.
  - Right from its inception in 1943, most ACTRA members were self-employed, working on contract for various production companies (first radio and film, then television)
  - Unlike the US, where the law, for collective bargaining purposes, recognizes screen and television actors as employees of the production company, Canadian actors are recognized as self-employed workers
  - The ACTRA members prefer it that way for the tax advantages
  - Members currently include performers such as actors, comedians, dancers, background performers, voice over specialists, singers, puppeteers and stunt performers.
  - ACTRA members may belong to other unions depending on where they work (e.g. singers performing with instruments who will be covered by the Musicians Association or live on stage who will be covered by Canadian Actors Equity)
  - At the film and video worksites where its members work, there are some jurisdictional disputes with the other unions involved (e.g. Director’s Guild, IATSE, Teamsters)
  - ACTRA shares many members with Equity as most actors work both on stage and in recorded media
  - ACTRA represents or claims jurisdiction over these performers when they work in English-language recorded media e.g. feature films, television, radio, corporate videos and commercials, and increasingly, digital media such as the world-wide web, cellphones, video games etc.
Following a craft union model, ACTRA operates a closed shop (with some exceptions) and membership is open only to those who have fulfilled the membership requirements:

- a performer who has enrolled in the apprentice membership program and had six professional engagements (three in the case of disabled and visible minorities)
- membership in a sister organization with whom ACTRA has a reciprocal arrangement e.g. Equity, Union des Artistes (UdA), the Screen Actors Guild and AFTRA (the last two being US counterparts)
- performers with a “professional reputation” based on a “recognized body of work”

Despite its differences from traditional unions, ACTRA is affiliated to the Canadian Labour Congress which recognizes its jurisdiction.

- It has formed alliances with traditional trade unions at various times; in the past with the Canadian Autoworkers Union and more recently with the United Steelworkers Union

ACTRA is arguably the strongest artist union in Canada

- There are few, if any, film and video engagers of any scale that operate without ACTRA members
- Even very small and experimental productions can operate under the ACTRA “Indie” collective agreement (not to be confused with the Independent Production Agreement IPA, which involves larger, more established production companies.)
- Engagers must engage ACTRA members or ask for permission to hire non-members
- ACTRA will declare any engager refusing to engage its members or breaking the collective agreement an “unfair”
  - List of unfair engagers is on ACTRA website
  - Strong compliance with boycotting the unfair list among professional actors
- Generally ACTRA has been very successful in having its members not work for unfair engagers
- Among its counterparts around the world, ACTRA is known for its aggressiveness in seeking to represent performers in emerging realms of technology e.g. digital media and obtaining rights for them. It is one of the only performers’ unions in the world devoting full-time staff to organizing these workers.
- Because of its strength, because of historical relations with US-based unions (SAG and AFTRA), and because of the high frequency of US production firms shooting film and television shows in Canada, there is much collaboration among the unions on both sides of the border
  - SAG and ACTRA attend as observers at each others’ negotiations with film and video producers
  - This was especially evident during the ACTRA’s recent (2006-7) negotiations and strike with the Canadian Film and Television Producers Association for the Independent Production Agreement
  - The US independent producers also observe at the negotiations because they contract Canadian performers and because many of the issues arise between them and the American performers’ unions

Weak organization on deployer side

- So weak and fractious were (and are) the entrepreneurs on the producer side that ACTRA and other film and video unions almost had to force them to unite to form the Canadian Film and Television Production Association (CFTPA)
- And in many cases, it is the cohesion of the unions and their entrepreneurial spirit on behalf of the industry that has kept a critical mass of workers together in various film and video-making cities through the ups and downs of the industry
- In fact, it can be said that the union organized the producers and the industry
- The following describes why the producers have found it so difficult to organize themselves:
  - “You have got that really wide, disparate [group] whose agendas are very very different and…goes back to that same entrepreneurial spirit for someone to be a film producer, a television producer in this country. You have got to have a bit of a screw loose to begin

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with because it is a very difficult business. So you have these kind of real individualistic, maverick business people who are out there trying to make a go of it and that doesn’t necessarily jibe with ‘let’s link arms and work together.’ In the same way ACTRA members compete against each other for every job so you have these producers very much for a piece of an ever shrinking pie…There is a sense of wanting to keep their cards pretty close to their chest but it does make it difficult for the industry to…work together. So what you end up with is the unions very much being the spokespersons for the industry, and the unions lobbying government and being much more high profile in that kind of work than perhaps the producers are. Producers tend to be very suspicious of organizations like the CFTPA.”

- In 1965, ACTRA took on Paul Siren as General Secretary. Siren, with a background in radical politics and the labour movement, later took what might at the time have seemed an unusual decision for a committed trade unionist. Seeing the decline of the Fordist model in the US film and television industry and the growing phenomenon of outsourcing and the decline of dominance of the CBC as an engager of talent, Siren, rather than pursuing the traditional collective bargaining model for his members, encouraged ACTRA’s emergence as an organization of the self-employed, following the “new craft union” model described by Stone.

- Siren felt that there were more long-term benefits for his members from being self-employed than being employed, even if this meant more uncertainty. As the film and video industry became more balkanized and employment became more tenuous, ACTRA would continue to represent its members more as a guild and less as a traditional union.

- In 1983, ACTRA formed the ACTRA Performers Rights Society, an arms-length offshoot meant to monitor, collect and distribute royalties on the re-playing of members’ performances.

- Siren was one of leaders in pursuit of “Status of the Artist” legislation

- As it progressed through the 1960s and 70s, ACTRA became more concerned with the furtherance of Canadian talent. In 1970 it first published a catalogue of 1100 Canadian performers called Face to Face. In 1972, it launched the ACTRA Awards to highlight its members’ achievements. After several high-profile decisions by the CBC to use non-Canadian talent in its productions, ACTRA members engaged in industrial action in 1977, refusing to issue permits for foreign performers and boycotting a production. While pursuing fraternal relations with its foreign counterparts, ACTRA follows their lead in limiting the permits it will give to foreign performers.

- Since then, ACTRA combined with other cultural unions/guilds in lobbying hard for Canadian content and the use of Canadian workers.

- ACTRA performs several services for its members including:
  - Collective bargaining:
    - ACTRA has several collective agreements which set minimum fees for performances and standard working conditions
    - Members then sign their own individual personal service contracts with engagers (producers) and they can and are encouraged to negotiate terms in excess of the collective agreement
    - ACTRA’s collective agreements are voluntary i.e. they are not negotiated under the auspices of any labour legislation. ACTRA organizes its members, approaches the engager and they enter into negotiations and reach a collective agreement.
    - New independent production companies agree to join the CFTPA and be governed by the collective agreement.
    - The major agreements are national in scope i.e. they cover performers across Canada and not in any particular province (the Union of British Columbia Performers [UBCP], affiliated with ACTRA negotiates separate agreements in that province)
  - ACTRA has eleven collective agreements of which the major ones include
    - Independent Production Agreement (with the Canadian Film and Video Producers Association and l’ Association des Producteurs de Films et de Televison du Québec representing the independent production companies)
    - Commercial agreement (with the Institute Of Communications And Advertising And The Association Of Canadian Advertisers covering performers in radio and television commercials)
Agreements with larger and medium-sized Canadian television networks e.g. CBC, CTV, TV Ontario, TV Ontario, CityTV, Vision TV

- National Film Board agreement

- The union also has agreements with very small producers, which allow members flexibility to work for less than scale on small scale and experimental productions e.g. “Training Film Agreement” in the Maritimes. There’s also the “Indie” agreement and the MIP (or member-initiated production.) It is a trade off of up front money in return for more control in how the film is used and a large percentage of revenue should the production obtain a broadcast licence.

- Examples of items included in the Independent Production Agreement:
  - Part A deals with the first performance; Part B deals with subsequent performances and is where the ACTRA Performers Rights Society enters into the picture
  - Minimum fees for performances
    - Nobody contracted by the engager shall make less than minimum rates
  - Residual payments
  - Use fees on participation in distributor’s gross revenue
  - Right to negotiate above minimums
    - Performers can and are encouraged to negotiate above the minimum fee
  - Conditions of engagement
    - Complete records on performers kept by engager
    - Engagers must post security of no less than two weeks’ performer payrolls plus insurance and retirement pay or a cash bond to indemnify union members against default
  - Preferential engagement of ACTRA members
  - Limitations on and non-Canadian productions and engagement of non-Canadian performers
    - Right of union to declare producers not meeting payroll obligations as “unfair” (tantamount to a boycott)
  - Grievance and arbitration procedure for disputes over the administration, interpretation, application, operation or alleged violation of the agreement
  - Length of workday, work week and overtime, rest periods, meal periods, preparation time (for makeup, hairdressing, costume fitting); travel time
  - Call-in, cancellations, schedule changes
  - Working environment provisions (amenities, health and safety)
  - Doubling (where performers do more than one role)
  - Limitations on nude, semi-nude and love scenes
    - Guarantees of privacy e.g. closed set
    - Limitations on recording and dissemination
    - Requirement of rider on contract specifying the details of the scene(s)
  - Limitations on risk and stunt performance
  - Limitations on engagement of and protections for minors (10% of the Maritime branch’s members are under 18)
    - Obligations to parents
    - Special restrictions on hours
    - Obligations of parents
    - Presence of parents and chaperones
    - Protection in case of disturbing material
    - Tutoring
    - Trust accounts
  - Credits
  - Deductions and remissions for the union

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ACTRA and/or its branches also provides other services for its members, including:

- Training
  - Courses on the business aspect of being an actor, audition protocols
  - National Apprenticeship Training Program
  - Workshops and forums on topics of interest
  - E.g. “Acting for the Camera”
- National talent directory for producers and casting agents as well as regional directories and voice catalogue (distributed to animation, commercial, digital media and documentary producers)
- Office or studio facilities for making of recordings, audition tapes etc.
- Participation in local film festivals
- Career advice e.g. dealing with agents, list of agents
- Annual ACTRA Awards
- Insurance and retirement benefits
  - Members contribute to these funds on a percentage based on fees received under ACTRA collective agreements
  - Interesting to note that the Insurance Plan includes cosmetic procedures as this is a benefit of importance to members
  - There are several levels of benefits, depending on a member’s contributions
- Retirement home
  - Union has established long term care homes for indigent older members
- Members Advantage Program
  - Several Canadian film and video unions have formed a group to offer discounts on products and services to their members
  - E.g. production and post-production facilities, transportation and hotels, insurance outside of ACTRA Fraternal, cultural venues and organizations, stores, cellular telephone service, health and beauty
- Political and cultural lobbying
- Fraternal relations with unions in other countries facilitate members working in those countries

ACTRA Performers Rights Society

- Incorporated in 1983 for the purpose of collecting use fee payments for performers after initial production
  - ACTRA now seems ambivalent on the question of Status of the Artist collective bargaining legislation
    - Main reason for the collective bargaining part of the S of A drive is to give unions of self-employed the power to have their voluntary agreements legally enforceable
    - The union has access to the Labour Relations Board or other tribunal (e.g. CAPPRT) if the employer refuses to negotiate, bargains in bad faith or committed any other “unfair labour practice”
  - But this is not as helpful to ACTRA as to other artists’ unions/guilds
    - ACTRA has been very successful in “wrapping up” the industry by implementing a closed shop.
      - There is no major part of the film and video industry where producers regularly defy ACTRA representation of members
    - The major ACTRA collective agreements are national in scope. But Status of the Artist Collective Bargaining legislation is primarily provincial. The Federal Status of the Artist legislation would not apply to film and video production since it comes under provincial
jurisdiction. Thus if ACTRA tried to enforce its national agreement through a provincial act and tribunal, the decision would cover only actors in that province.

- However, given the events of ACTRA’s first strike in the Spring of 2007, it could be that the union is reconsidering S of A Collective Bargaining Legislation
- Also, ACTRA branches in other provinces are participating in the campaign for S of A collective bargaining legislation.

o ACTRA IPA strike Spring 2007

- At negotiations for a new Independent Production Agreement in 2006, one of the stickiest bargaining points was the use of recordings of ACTRA members in digital media such as webisodes, cellphone films, ring-tone voiceovers and the Internet.
- A problem emerged due to the involvement of the US film and video industry, which makes many productions in Canada.
- The latter were worried about any Canadian deal on digital media as it would affect upcoming labour talks in the US between the industry and its unions where the issue was also large.
- The US studios did not want an agreement in Canada that affected them until after they were able to negotiate with their own unions.
- “‘It's the U.S. studios who are really pushing for the Internet for free,’ said Jamie Bradley, ACTRA's national vice-president and the national councillor of ACTRA Maritimes. ‘It's a global issue. ACTRA is the first to come to the table with this issue head on and not back down.’
- “‘At last week's negotiations there were two producers and eight lawyers for U.S. studios in the room on one side of the table,’ Webb said. (This issue is looming in the U.S. with the Writers Guild of America, the Directors Guild of America and the Screen Actors Guild.)”
- ACTRA denounced the involvement of the US heavy hitters in the negotiations, but the impact of the US studios on the Canadian film and television industry is undeniable. Indeed, the Americans threatened or actually began cancelling slated productions in Canada from the beginning of the strike.
- And much of the media coverage of the strike focused on the American angle, even though US studios were not even officially part of the negotiations.
- In fact, after the parties had made an agreement to end the strike, the American producers intervened and the parties had to go back to the bargaining table to finalize arrangements that would be acceptable to the Americans.
- ACTRA members voted 96.5% in favour of a strike
- Because the IPA is a voluntary national agreement and does not necessarily fall under any particular provincial collective bargaining legislation, the agreement (in a “negotiation protocol”) contains lengthy language governing how negotiations will be carried out and how the parties will conduct themselves in the case of a breakdown in negotiations for a new agreement and a work stoppage.
- The protocol does specify that either party can go to a relevant provincial labour relations board to enforce non-compliance with a negotiation protocol contained in the IPA
- The protocol allows for the right to strike:
  - “7.4 The Parties to this Agreement, the individual members of ACTRA, and all of the Producers who have authorized the Associations to bargain on their behalf agree that ACTRA shall be authorized and permitted to call a strike in compliance with the terms of this Appendix, notwithstanding the fact that ACTRA may not have complied with the statutory provisions of any labour legislation in any of the provinces or territories of Canada, and further agree that ACTRA and its members shall be entitled to legally strike in any such province or territory so long as the provisions of this Appendix have been adhered to.”
  - And there is a similar right to lock out
- However, because no strike or lockout had occurred before under the IPA, much of the conduct of a strike was in a sort of legal limbo.

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Although the agreement is national, ACTRA hedged its bets by approaching the labour relations boards of all provinces covered in the agreement, seeking legal sanction to have its members strike in that province. It obtained such legal sanction more quickly and easily in some provinces than in others and so the strike began on January 8 in Ontario and a few days later in Quebec, Saskatchewan and Manitoba. Nova Scotia joined on February 13 and Newfoundland and Labrador were slated to join on February 15 (after a deal had been reached.)

Because of the aggressiveness of the deployer side, it was clear that relying on the negotiation protocol could be bad for the union

• “Because we had a very aggressive litigator representative on the other side…[their negotiator was] very determined to break ACTRA in this last round of negotiations. So knowing what his intent was, again in our efforts to think strategically about what we were doing here, we felt it wasn’t sufficient going into these negotiations, we thought it wasn’t sufficient simply to rely on the negotiation protocol. If we had relied simply on the negotiation protocol and dealing with this litigious negotiator on the other side we could well end up, if we were in a dispute, potentially in a withdrawal of services, and wanted to ensure that we weren’t just relying on contractual law but also on statutory provisions. So we chose to ensure that we were in compliance with labour law as well. So as a consequence on the second day of bargaining, we always file our notices to bargain with the various ministries across the country because ACTRA would like agreements with all the ministries across the country, on the second day of negotiations knowing we were going to run into serious problems very quickly, we applied for conciliation.” (Interview with ACTRA CEO Stephen Waddell)

• Had they relied strictly on the negotiation protocol, the deployer would have had them tied up in court for a long time, legally preventing them from striking and wearing them down with litigation by concentrating on the picayune details of the protocol. But striking under statutory collective bargaining provisions would allow them to legally strike as soon as they had fulfilled the statutory requirements to do so.

One great fear of the deployers was that the strike would shut down continuing productions, putting them in jeopardy. This would jeopardize the ongoing shooting of such programs as Deal or No Deal, Little Mosque on the Prairie and the upcoming season of Canadian Idol. However, the union came up with a solution, proposing to individual producers that they sign “continuation deals” in order to be exempt from the strike. Such deals would guarantee union members the 7% wage increase ACTRA was asking for at the table. Most producers of ongoing projects across the country signed these deals. By the first day of the strike, ACTRA Toronto Branch President Karl Pruner announced: “All the producers have broken from their association and signed these agreements.” This fatally undercut the solidarity of the producer side of the bargaining table and has caused a crisis in the already fractious relationship among the producers. "Essentially we're splitting the producers up," [ACTRA President] Waddell said. "They're coming over to our side, and this negotiating committee we're dealing with had better understand they'd best come to terms with us before they lose their association."

The producers’ associations i.e. the CFTPA and Association de producteurs de films et de television du Quebec, claimed that the strike and the continuation deals were illegal. CFTPA approached the Ontario courts to seek an injunction, which was denied. However, an Ontario court did appoint an arbitrator to settle the dispute about how the work stoppage would proceed. The union appealed this decision.

As the strike continued, several productions were said to have been cancelled. There were many fears that the strike would tip the always fragile Canadian film and video industry into disaster, especially in major production centres like Toronto, already suffering from a decline in production due to the terrorist attacks of 9-11 (frightening Americans from traveling abroad), the SARS episode, the strengthening Canadian dollar.)One report had the City of Toronto losing 

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least two feature movies and as much as $400 million in lost production, while film revenues so far this year over last year are significantly lower. Nova Scotia was said to have lost two $10 million feature films that would have employed 200 people.

By February 16, the strike was over.

The eventual settlement:

- Performers get 10% increase in compensation over the new agreement's three-year term. 3-per-cent increase in pay for any kind of work first year, plus a 1-per-cent increase in future retirement payments. Wages increase another 3 per cent in the second year of the contract, and an additional 3 per cent in the third year.
- Performers to be compensated for the use of their work on the internet. Producers to share 3.6% of revenues received from the use of productions on the internet, tracked separately.
- Important improvements to work rules on set, including improved language governing equal opportunities for employment, harassment, rules governing child performers, and working conditions on set.
- Incentives to encourage low-budget, 100% Canadian independent production updated.
- Actors in Canada to be paid by Canadian producers for work done for new media, just as they would be for traditional media. Six months after making a new-media work, actors will receive an additional cheque for 3.6 per cent of the gross distribution revenue.
- The US producers managed to exempt themselves from the new media provisions, at least until they have a chance to negotiate such provisions with their own unions.

The Blue Man Group Dispute and Canadian Actors Equity 2006

- Industrial relations in Toronto live theatre scene
  - Historically peaceful relations between theatre theatre impresarios and unions
  - union fulfils function of organizing the talent for the deployers
  - with a few exceptions
    - some visiting productions
    - a few holdouts e.g. The Mousetrap
    - amateur productions
- Canadian Actors’ Equity Association (I)
  - history
    - Equity begins 1913 Broadway
    - famous stage actors e.g. Barrymore, Dressler are initiators
    - actors seek ‘Equitable contracts’
    - 30-day strike 1919 for recognition
    - 1919 extends to Canada
    - 1954 Canadian section organizes at Stratford Festival
    - 1960 Canadian section obtains “autonomy” from New York
    - 1976 Canadian section separates from American union; ‘amicable settlement’
  - represents 5,500 active professional artists
  - actors, singers, dancers and other performers in live stage productions
  - membership in Equity is sign of “professionalism” as a stage actor
  - for lack of a better indicator, and as a shortcut, the industry classifies serious shows from more junior or fly-by-night productions by whether the majority of cast are Equity members
  - Kate Taylor, Toronto Globe and Mail
    - ‘Toronto's commercial theatre scene has been built by the members of these associations [unions] and if Blue Man Group doesn't work with them it's freeloading off that history. However you may weigh the advantages and

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disadvantages of unions, the fact is workers aren’t going to make steel or cars for free, but people will act and play music for free.’

- ‘By establishing a permanent, professional work force, they [unions] have helped build both the commercial theatre scene in Toronto, and a non-profit scene locally and nationally.’
  - Richard Ouzounian, Toronto Star: “you could tell it wasn’t an Equity production”

- types of members:
  - probationary
  - full
  - associate
  - reciprocal agreements w. British & US Equity, ACTRA, AFM
  - as with ACTRA, membership by and large self-employed

- Other unions in the Toronto live theatre scene
  - (AFM) American Federation of Musicians
    - self-employed like performers in Equity
  - (IATSE) International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada
    - US union founded in 1893
    - Toronto Stage Employees Union 1894 (affiliated to IATSE in 1898)
    - local 58 represents Toronto live theatre stage hands
    - 2 other locals (motion picture & TV; hair & costume etc.)
    - unlike Equity and AFM, members are mostly employees of venue

- Enter the “new entertainment factories” e.g.
  - Blue Man Group
  - Cirque du Soleil
  - Stomp

- Elements of work organization in the new entertainment factories
  - begin as anti-establishment ‘street performers’
  - anonymous performers (no stars)
  - the organization, not the artists forms the “brand”
  - grow quickly into mega-organisations
  - management still acts small
  - ‘It’s the old David-became-Goliath-without-noticing-it routine. Good intentions, bad effects.’ (Kevin Temple, NOW Magazine)
  - high organisational integrity and loyalty
  - charismatic leadership
  - in-house production
  - in-house human resources management
  - either anti-union (BMG) or union avoiders (Cirque)

- Blue Man Group
  - began 1991 as small off-Broadway show w. three performers
  - now 500-employees, worldwide, US $100 million annual revenues
  - 3 mute, blue-faced characters, playing plastic tubing, throwing paint, spitting balls
  - combination of clown, mime, performance art
  - has gone non-union in US
    - union jurisdictional disputes help
  - subject to unfair labour practice charges in several US states
    - ”We're artist-owner-operated. We're the artists who started it, created it and still perform in it, direct it,” "Nothing in the law requires us to be a union house, just tradition. So we're a different tradition, a new tradition.. We spent our entire careers building an organization where people are evaluated on mutual respect, collaboration, safety, contributing to the vibe..” (Matt Goldman, Blue Man Group)

- The Blue Man Group comes to Toronto 2005
  - arranges for open-ended run in Panasonic Theatre (5 years mentioned)
theatre owned by Clear Channel Entertainment
- cast and crew of about 70
- refuses to negotiate with 4 Toronto theatrical unions (2 IATSE locals)
- "We are clearly not going to be a signatory to any union. That's just not what we do," Igrejas said via phone from New York. "We have built our own business model and offer competitive salaries and full benefits."
- "any disruption and/or delay in the construction and/or renovation work" by the picket could result in "legal remedies . . . including a claim for damages."

- The unions organise BMG boycott
  - show launches June 19, 2005
  - street demonstrations, picketing, posters, leafletting
  - boycott promulgated through Ontario trade union movement
  - special request to teachers’ unions

- Progress of the campaign
  - teachers’ unions respond & class outings low
  - downtown hotels remove promotional material
  - BMG launches publicity, legal campaign
  - media generally sympathetic to unions
  - larger theatrical impresarios sympathetic to unions
  - some entrepreneurs wait to see if unions will fail

- Kate Taylor article, Globe & Mail
  - Blue Man Group just doesn't get it. Perhaps there's no reason it should, not being from these parts and all, but it's going to have to wise up soon because its show is set to open in Toronto next month and its little public relations problem is becoming a public relations fiasco.’

- Postscript of Blue Man Group dispute
  - BMG pulls out of Toronto 16 months after opening
  - denounces Toronto theatre audiences
  - difficult to estimate impact of boycott
  - was BMG’s hour past?
  - determination of union campaign a cautionary tale for other non-union operations

- Conclusion
  - There are similarities in the two disputes:
    - Lack of traditional Wagnerist mechanism is not necessarily fatal to achieving collective bargaining
    - But falling back on commercial law is much less powerful than statutory collective bargaining law
    - The success of the non-Wagnerist model depends on employer compliance & recognition of the union’s positive role in the industry
      - Both disputes showed that this peace could be easily broken when a highly aggressive deployer side decides to ignore or challenge the old way of doing things
      - The highly aggressive deployer actions were spawned or abetted by the presence of large, corporate, usually American, operators entering the scene
        - left to the local or even national Canadian organizations, the disputes might not have become so protracted
    - The unions could not depend on peace reigning forever and had to be prepared to become aggressive themselves when necessary
      - in both situations, the unions responded with a high degree of innovation and organizational agility
      - also relied on allies to help